

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Carl Reichenbach,

Plaintiff,

-V-

**Case No. C-2-03-1132
JUDGE SMITH
Magistrate Judge King**

City of Columbus, *et al.*,

Defendants.

ORDER

Plaintiff Carl E. Reichenbach has moved this Court to strike the affidavit of Wayne King filed in support of Defendants' Memo Contra Plaintiff's Motion for Partial Summary Judgment (Doc. 84).¹ Plaintiff argues that the documents attached to Mr. King's affidavit were requested in prior document requests but never received. Plaintiff even states that such documents were the subject of prior Motions to Compel. In addition, Plaintiff argues that Mr. King's affidavit contradicts his prior deposition testimony. For the reasons that follow, Plaintiff's Motion to Strike is denied.

¹ In this same Motion, Plaintiff also moved the Court for an order extending the time for Plaintiff to file his Reply to Defendant County's Memo Contra until ten days after a decision on the Motion to Strike. Magistrate Judge King issued an Order on December 2, 2005, granting Plaintiff's request for an extension (Doc. 86). The Order also granted Defendants an extension of ten days after the resolution of the Motion to Strike to file their Motion for Summary Judgment. Therefore, while Plaintiff's Partial Motion for Summary Judgment is filed, it is not fully briefed. The Court will therefore address both parties Motions for Summary Judgment after they are fully briefed.

Federal Rule of Civil Procedure 12(f) governs motions to strike. Rule 12(f) provides:

Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent or scandalous matter.

An affidavit that does not satisfy the requirements of Rule 56 (e) is subject to a motion to strike. Federal Rule of Civil Procedure 56(e) provides:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

The Court has carefully reviewed the parties arguments with respect to the affidavit of Wayne King, the facilities manager for Franklin County, Ohio, as well as the documents attached to Mr. King's affidavit. Specifically, the Court has reviewed Interrogatories 6 and 7 and Request for Documents No. 2, that Plaintiff's claims contain a request for the Transition Plan. The Interrogatories and Requests are vague at best. While the Request for Documents No. 2 does mention plan, the Request is in the context of the Interrogatories which mention building permits and building plans. It is easy to see how Defendants may not have believed the Transition Plan at issue to be relevant. Defendants assert that until Plaintiff raised the transition plan in his Motion for Summary Judgment, it was not even relevant.

Further, Plaintiff argues that Mr. King's affidavit is contrary to his previous testimony. The Court has reviewed the testimony and the affidavit and does not find any conflicts. While the testimony is not identical, the affidavit is simply more condensed.

The Court finds that Plaintiff has failed to establish any reason why the affidavit of Mr. King should be stricken from the record. It appears that the issue regarding the transition plan

was first raised in Plaintiff's Motion for Partial Summary Judgment. Defendants then responded with their Memo Contra and the King Affidavit. Plaintiff is not prejudiced at all and in fact will still have ten days from the issuance of this Order to file a reply brief and can address such issues at that time.

Based on the above, the Court **DENIES** Plaintiff's Motion to Strike. Plaintiff shall have ten days from the issuance of this Order to file his reply brief in support of his Motion for Partial Summary Judgment and Defendants shall have ten days from the issuance of this Order to file a Motion for Summary Judgment.

The Clerk shall remove Document 84 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT